

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION**

WINNER ROAD PROPERTIES, LLC,)
)
Plaintiff,)
)
v.)
)
BMO HARRIS BANK, N.A., as trustee of Mount Washington Cemetery trusts, and individually,)
)
Defendant.)

NOTICE OF REMOVAL

Defendant BMO Harris Bank, N.A., (“BMO”) hereby removes this case from the Circuit Court of Jackson County at Kansas City, to the U.S. District Court for the Western District of Missouri. *See* 28 U.S.C. §§ 1332 and 1446. Venue is proper as this district encompasses Jackson County, in which the action is pending. *See* 28 U.S.C. § 1391. In support of removal, BMO states as follows:

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

1. As required by 28 U.S.C. § 1446(a), Exhibits A and B contain all process, pleadings, and orders served upon BMO in this action.
2. This lawsuit was filed on June 13, 2016, in the Circuit Court of Jackson County at Kansas City, Case No. 1616CV CV14045. *See* Petition, Ex. A. A summons issued on June 14, 2016. *See* Summons, Ex. B. BMO received the summons and complaint on June 16, 2016. Accordingly, the 30-day period for filing this Notice has not passed, and removal is timely pursuant to 28 U.S.C. § 1446(b).
3. There are no pending motions before the Circuit Court of Jackson County and BMO has not filed an answer or other responsive pleading in the state court action.

4. Pursuant to Section 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the Circuit Court of Jackson County at Kansas City, Missouri. A copy of the Notice of Removal to Federal Court filed in the Circuit Court is attached hereto as Exhibit C.

5. No previous request has been made for the relief requested herein.

6. The U.S. District Court for the Western District of Missouri, Western Division is the proper court to which this matter should be assigned, for purposes of removal, because it is the district that encompasses the Circuit Court of Jackson County at Kansas City, Missouri, where Plaintiff's action is pending.

7. BMO hereby reserves any and all rights to assert any and all defenses to Plaintiff's petition, including but not limited to failure to state a claim upon which relief can be granted. BMO further reserves the right to move for a transfer of venue, *forum non conveniens*, or other relief relating to forum or venue.

REMOVAL IS PROPER BASED ON DIVERSITY JURISDICTION

8. Plaintiff's petition is properly before this Court based on diversity jurisdiction. 28 U.S.C. § 1332.

9. BMO is a national banking association with its headquarters and main office located in Illinois. *See* https://www5.fdic.gov/idasp/confirmation_outside.asp?inCert1=16571.

10. "A national bank is a citizen of the state where its main office, as established in its articles of incorporation, is located." *Armed Forces Bank, N.A. v. Gianulias*, No. 11-00974-CV-W-DGK, 2012 WL 1077894, at *2 (W.D. Mo. Mar. 30, 2012) (finding diversity of citizenship) (citing *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006)). Therefore BMO is a citizen of Illinois for purposes of diversity jurisdiction.

11. Plaintiff is a Missouri limited liability company. (Petition ¶ 1.) “[A]n LLC's citizenship is that of its members for diversity jurisdiction purposes.” *GMAC Commercial Credit LLC v. Dillard Dep't Stores, Inc.*, 357 F.3d 827, 829 (8th Cir. 2004). Plaintiff's organizer John Coghlan has a Lee's Summit, Missouri address, and on information and belief, Plaintiff's members are all citizens of Missouri and/or Kansas. Therefore Plaintiff is a citizen of either Missouri and/or Kansas for purposes of diversity jurisdiction, but is not a citizen of Illinois.

12. While BMO denies that Plaintiff is entitled to any relief whatsoever, the amount in controversy exceeds \$75,000. Plaintiff alleges that it is entitled to a restitutionary award of money including lost investments, future operating losses, and lost investment earnings on trust assets. (Petition ¶ 82). Under Count I, Plaintiff seeks “all amounts necessary to fully restore to this trust all customer payments received,” which allegedly ranges between \$8,032,755 (Petition ¶ 57) and \$5,145,463 (Petition ¶ 59). Under Count II, Plaintiff demands that BMO pay Plaintiff “over \$134,706 plus interest” to allegedly “correct the non-payment of annual earnings”. (Petition ¶ 71). Additionally, Plaintiffs seek attorney's fees, which may be considered in calculating the amount in controversy. *Crawford v. F. Hoffman-La Roche Ltd.*, 267 F.3d 760, 766 (8th Cir. 2001). In this case, the damages Plaintiff is seeking exceed this Court's jurisdictional amount in controversy requirement.

13. Accordingly, this is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332 and is one that may be removed to this Court by BMO pursuant to 28 U.S.C. § 1441.

CONCLUSION

14. There is complete diversity of citizenship between the parties because BMO and the Plaintiff are citizens of different states. The amount in controversy exceeds \$75,000.

Finally, all procedural requirements have been met. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1332.

WHEREFORE, BMO prays that this action be removed from the Circuit Court of Jackson County at Kansas City, Missouri to the U.S. District Court for the Western District of Missouri.

Dated: July 6, 2016

Respectfully submitted,

BMO HARRIS BANK, N.A.

By: /s/ Timothy J. Davis

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*Attorneys for Defendant BMO Harris Bank,
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CERTIFICATE OF SERVICE

The undersigned counsel for Defendant BMO Harris Bank, N.A. hereby certifies that on July 6, 2016, the foregoing Notice of Removal was served on counsel for Plaintiff, listed below, by electronic mail and U.S. Mail:

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